



STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION  
ALBANY, N.Y. 12232  
Telephone: (518) 457-2411

FRANKLIN E. WHITE  
COMMISSIONER

REGISTRATION NO. 15018 - E  
AUG 4 1986 5:53 PM  
INTERSTATE COMMERCE COMMISSION

July 31, 1986

Office of Secretary  
Application and Fees Unit  
Room B-207  
Interstate Commerce Commission  
12th and Constitution Avenue, N.E.  
Washington, DC 20423

Re: Recording Evidence of Agreement  
49 USC §11303, #D210148,  
dated July 2, 1981

Dear Madam:

I have enclosed the following true copies of original documents described below, which have been certified to be complete and identical in all respects to the original document under 49 C.F.R. 1177.3(b), to be recorded pursuant to Section 11303 of Title 49 of the U. S. Code.

This document is an Agreement, a primary document identified as Agreement No. D210148 and dated July 2, 1981 between the New York State Department of Transportation (NYSDOT) and the Delaware and Hudson Railway Company (D&H) by which New York State retained title to certain rolling stock and equipment leased to the D&H in exchange for an executory promise that 25% of the said rolling stock shall be assigned for the benefit of facilities in New York State and further that the per diem charges collected by these cars will be deposited in an escrow account for specific purposes as provided for in said agreement.

The filing of this document does not constitute a waiver of any rights New York may have under the contract or pursuant to any law.

The names and the addresses of the parties to the documents are as follows:

Title holder to equipment and beneficiary  
of escrow account:

New York State Department of Transportation  
Legal Services Bureau  
Building 5, Room 509  
State Campus  
Albany, New York 12232

100 OFFICE OF  
THE SECRETARY  
AUG 4 2 52 PM '86  
MOTOR OPERATING UNIT

*Counterpart*

Service provider, user of equipment and fiduciary charged with the duty of collecting, managing and expending the funds deposited in said escrow account:

Delaware and Hudson Railway Co.  
5th Street  
Watervliet, NY 12189

A description of the rolling stock and equipment covered by this document follows:

The rolling stock consists of two hundred (200) box cars. An itemized list is annexed to this letter and can also be found in Schedule "A" in Agreement D210148.

The filing fee has been waived pursuant to 49 C.F.R. 1002.2(e)(1) because the New York State Department of Transportation is a State governmental entity.

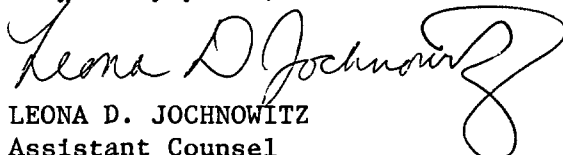
Please return the extra certified true copies not needed by the Commission for recordation to:

Leona Jochnowitz or William J. Dwyer, Esqs.  
Legal Services Bureau  
New York State Department of Transportation  
Building 5, Room 509  
State Campus  
Albany, New York 12232

A short summary of the document to appear in the index follows:

This is a primary document and represents an Agreement between the title holder, the New York State Department of Transportation and the D&H, the service provider and the user of this equipment. Under the terms of this Agreement, New York retained title in the aforementioned two hundred (200) box cars and the D&H agreed to upgrade and/or modernize said box cars at a cost to the State not to exceed \$2,750,000.00. In exchange, the D&H further agreed to maintain the said box cars for the period specified in the agreement and to use 25% of the said cars in New York State to maintain rail services and to act as a fiduciary charged with the duty of collecting, managing and expending the funds deposited in said escrow account. The filing of this document does not constitute a waiver of any rights New York State may have under the Agreement or pursuant to law.

Very truly yours,



LEONA D. JOCHNOWITZ  
Assistant Counsel  
Legal Services Bureau

cc: Kathleen King, Esq.  
Office of Secretary

# SCHEDULE "A"

## SCHEDULE "A" EQUIPMENT DESCRIPTION

THE FOLLOWING IS A LIST OF BOX CARS BY NUMBER PREVIOUSLY MAINTAINED BY D & H RAILROAD:

29001	29022	29045	29069	29092	29114	29135	29211	29321	29417
29002	29023	29046	29070	29094	29115	29136	29212	29322	29419
29003	29024	29047	29071	29095	29116	29137	29213	29327	29423
29004	29025	29048	29072	29096	29117	29138	29214	29329	29440
29005	29026	29049	29074	29097	29118	29142	29220	29333	29447
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29020	29043	29067	29090	29112	29132	29204	29291	29412	29489
29021	29044	29068	29091	29113	29133	29206	29310	29413	29505

INTERSTATE COMMERCE COMMISSION

Catherine Kuzsman being duly sworn, deposes and says:

1. That your deponent is a Senior Rail Transportation Specialist with the Rail Division of the New York State Department of Transportation.
2. That among her duties she is involved with the capital construction projects with the Delaware and Hudson Railway Company and Guilford Transportation Industries and its subsidiaries.
3. That as such your deponent has access to the original executed agreements which have been entered into between the said Delaware and Hudson Railway Company, Guilford Transportation Industries, its subsidiaries and the New York State Department of Transportation.
4. That your deponent has read the original agreement identified as:

Agreement D210148 dated July 2, 1981  
between NYSDOT and the D&H

as hereby certifies that the attached is a true, accurate and complete copy of the original agreement now on file in the offices of the New York State Department of Transportation.

Catherine Kuzsman  
Catherine Kuzsman

Sworn to before me <sup>1st</sup>  
this AUG day of 1986.

Notary Public

**WILLIAM J. DWYER**  
Notary Public in the State of N. Y.  
Resident in and for Niagara County  
Commission Expires March 30, 1987

D210148

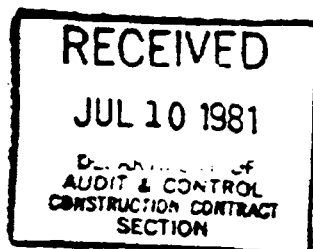


STATE OF NEW YORK  
DEPARTMENT OF TRANSPORTATION

WILLIAM C. HENNESSY, COMMISSIONER

LEASE

AGREEMENT



THIS AGREEMENT made this second day of July, 1981, by and between the People of the State of New York, (hereinafter referred to as the "Lessor") acting by and through the Commissioner of Transportation, AND the Delaware and Hudson Railway Company, (hereinafter referred to as the "Lessee"), a railroad company authorized to do business in New York State.

WITNESSETH:

WHEREAS, Section 14-d of the Transportation Law authorizes the Commissioner to enter into contracts for the purpose of maintaining and improving rail transportation service; and

WHEREAS, funds have been appropriated to the Department for the Project to be undertaken in accordance with the provisions of this Agreement pursuant to the provisions of Section 14-d of the Transportation Law; and

WHEREAS, the Commissioner of Transportation is familiar, pursuant to his statutory duties, with the Lessee, including its capital and operating assets and liabilities, its current and projected ability to provide necessary rail freight service to shippers located in the State and thereby serve the public interest; and

WHEREAS, the Commissioner of Transportation has determined that this AGREEMENT, is necessary in order to provide the Lessee with the ability to continue its necessary service by insuring an adequate number of box cars for such rail service, and to provide revenues for the maintenance of such box cars, and for other necessary railroad improvements to the Lessee, and, in the sole discretion of the Commissioner, for other railroad projects in the State; and

WHEREAS, the parties hereto desire to accomplish the completion of the Project to be undertaken in accordance with the provisions of this AGREEMENT;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, conditions, terms and obligations herein set forth, do agree as follows:

1. Lease. Lessor hereby leases to lessee, and lessee hereby leases and hires from lessor, the two hundred railroad box cars described in Schedule A, which is attached hereto and made a part hereof. All said box cars described in said Schedule A are hereinafter collectively called "equipment".

2. Term. The term of this lease respecting each item of equipment commences as of the date hereof, and shall continue until December 31, 2001, unless sooner terminated as hereinafter provided.

3. Rent. The rent for the box cars described in Schedule A shall be one dollar per year, payable at the office of Lessor at 1220 Washington Avenue, Albany, New York 12232, or to such other person and/or at such other place as lessor may from time to time designate in writing.

4. Use. Lessee shall use the equipment in a careful and proper manner in accordance with the provisions of this AGREEMENT, in particular with paragraph 26. If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings, stating that the equipment is owned by Lessor, Lessee shall affix and keep the same upon a prominent place on the equipment.

5. Lessor's Inspection. Lessor shall upon reasonable notice, at any and all times during business hours have the right to enter into and upon the premises where the equipment may be located for the purpose of inspecting the same or observing its use.

Lessor shall give to Lessee the names of its authorized representatives who will conduct such inspections or observations and Lessee, upon reasonable notice, shall make arrangements and obtain written authority permitting entry by such representatives upon any railroad property not generally open to the public. Lessee shall give Lessor immediate notice of any attachment or other judicial process affecting any item of equipment and shall, whenever requested by Lessor, advise Lessor of the location of the equipment.

6. Alterations. Without the prior written consent of Lessor, Lessee shall not make any alterations, additions or improvements to the equipment. All additions and improvements of whatsoever kind or nature made to the equipment shall belong to and become the property of Lessor upon the expiration, or earlier termination, of this lease.

7. Loss and Damage; Stipulated Loss Value. As between Lessor and Lessee, Lessee hereby assumes and shall bear the entire risk of loss and damage to the equipment from any and every cause whatsoever. No loss or damage to the equipment or any part thereof shall impair any obligation of Lessee under this lease which shall continue in full force and effect.

In the event of loss or damage of any kind whatever to any item of equipment, lessee at the option of Lessor shall;

- (a) Place the same in good repair, condition and working order; or
- (b) Replace the same with like equipment in good repair, condition and working order; or if same is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, Lessee shall:



(c) Pay Lessor therefor in cash the value of the box car calculated in accordance with the Association of American Railroads Interchange Rule 107-Damaged and/or Destroyed Cars Handling Line Responsibility, or, if said rule shall have been amended or changed, in accordance with the applicable rule in effect at the time of such loss and/or damage. Upon such payment this lease shall terminate with respect to such item of equipment so paid for and Lessee thereupon shall become entitled to such item of equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever.

8. The Lessor may terminate this Agreement without cause upon a determination by the Lessor that such termination is in the public interest. Any such termination shall not give rise to, or provide a basis for any claim for damages by the Lessee and the Lessee shall make no claim. Upon any termination all moneys due to the Lessor shall be paid immediately, and all equipment covered by this Agreement shall be returned to the Lessor. With respect to such equipment which may be in the possession of the Lessee at the time of notice of termination, the Lessee is required to return same at its own expense to the Lessor by delivering such items of equipment to such place on Lessee's line as Lessor shall specify. With respect to equipment covered by this Agreement not in the possession of the Lessee at the time of notice of termination, the Lessee shall immediately cause an order to be issued requiring that the equipment be returned to the Lessee as quickly as possible in accordance with normal industry operations, and upon return of each such piece of equipment, the Lessee shall so notify the Lessor, and the Lessee shall be required at its own expense to deliver same to such point on its line as the Lessor shall direct. Notwithstanding the provisions herein, the Lessee shall have an absolute responsibility for returning all such equipment to the Lessor within 90 days after notice of termination.

9. Repairs. Lessee, at its own cost and expense, shall keep the equipment in good repair, condition and working order and in accordance with all applicable Association of American Railroads standards and shall furnish any and all parts, mechanisms and devices required to keep the equipment in good mechanical and working order.

10. Surrender. Upon the expiration or earlier termination of this lease, with respect to any item of equipment, Lessee shall (unless Lessee has paid Lessor in cash the "Stipulated Loss Value" of such item of equipment pursuant to paragraph 7 hereof) return the same to Lessor in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering such item of equipment at Lessee's cost and expense to such place as Lessor shall specify pursuant to the provisions of paragraph 8 hereof.

11. Taxes. Lessee shall keep the equipment free and clear of all levies, liens and encumbrances and shall pay all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the equipment.

12. Lessor's Payment. In case of failure of Lessee to pay said fees, assessments charges and taxes, all as hereinbefore specified, Lessor shall have the right, but shall not be obligated, to or pay said fees, assessments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to Lessor with the next installment of rent, and failure to repay the same shall carry with it the same consequence, including interest at the legal rate, as failure to pay any installment or rent.

13. Warranties. Lessor makes no warranties, either express or implied, as to any matter whatsoever, including, without limitation, the condition of the equipment, its merchantability or its fitness for any particular purpose.

14. Indemnity. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting from the equipment, including without limitation the manufacture, selection, delivery, possession, use, operation or return of the equipment.

15. Default. If lessee with regard to any item or items of equipment fails to observe, keep or perform any provision of this lease required to be observed, kept or performed by Lessee, Lessor shall have the right to exercise any one or more of the following remedies:

(a) To take possession of any or all items of equipment without any court order or other process of law. Lessee hereby waives any and all damages which might be occasioned by any such taking of possession. Any such taking of possession shall not constitute a termination of this lease as to any items of equipment not repossessed unless Lessor expressly so notifies Lessee in writing.

(b) To terminate this lease as to any or all items of equipment.

(c) To pursue any other remedy available to Lessor at law or in equity. Notwithstanding any said repossession, or any other action which Lessor might take, Lessee shall be and remain liable for the full performance of all obligations on the part of the Lessee to be performed under this lease.

All such remedies are cumulative, and may be exercised concurrently or separately.

16. Bankruptcy. Neither this lease nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act, as amended, is commenced by or against the Lessee, or if the Lessee is adjudged insolvent, or if the Lessee makes any assignment for the benefit of his creditors, or if a writ of attachment or execution is levied on any item or items of the equipment and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which the Lessee is a party with authority to take possession or control of any item or items of the equipment, Lessor shall have and may exercise any one or more of the remedies set forth in paragraph 15 hereof; and this lease shall, at the option of Lessor, without notice, immediately terminate and shall not be treated as an asset of Lessee after the exercise of said option.

17. Concurrent Remedies. No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

18. Lessor's Expenses. Lessee shall pay lessor all costs and expenses, including attorney's fees, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.

19. Assignment. Without the prior written consent of Lessor, Lessee shall not (a) assign, transfer, pledge or hypothecate this lease, the equipment or any part thereof, or any interest therein, except that nothing in this Agreement or in this Paragraph 19 shall limit the right of Lessee to assign its interest in this Agreement, as lessee, to Citibank, N.A., pursuant to Assignment of Interest in Lease, intended to be of even date herewith, and to United States Railway Association (USRA) and United States of America (USA), pursuant to Agreement to Assign Interest in Lease, intended to be of even date herewith, the said Citibank, N.A., USRA, and USA being the holders of mortgages upon the property of Lessee; or, (b) sublet or lend the equipment or any part thereof; provided, however, that this provision shall not operate to prevent the interchange of such equipment in accordance with interchange rules of the Association of American Railroads as provided by the Interstate Commerce Commission, except as otherwise provided in this Agreement. Consent to any of the foregoing prohibited acts applies only in the given instance; and is not a consent to any subsequent like act by Lessee or any other person.

Subject always to the foregoing, this lease insures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

20. Lessor's Assignment. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to Lessee. If Lessor assigns this lease or the rentals due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor or Lessee, should there be one, shall excuse performance by Lessee of any provision hereof. No such assignee shall be obligated to perform any duty, covenant or condition required to be performed by Lessor under the terms of this lease.

21. Ownership. The equipment is, and shall at all times be and remain, the sole and exclusive property of Lessor; and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease.

22. Non-waiver. No covenant or condition of this lease can be waived except by the written consent of Lessor. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Lessee to which the same may apply, and, until complete performance by Lessee of said covenant or condition, Lessor shall be entitled to invoke any remedy available to Lessor under this lease or by law or in equity despite said forbearance or indulgence.

23. Entire Agreement. This instrument constitutes the entire agreement between Lessor and Lessee; and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

24. Notices. Service of all notices under this agreement shall be sufficient if given personally or mailed to the party involved at its respective address hereinbefore set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, "Certified Mail, Return Receipt Requested," duly addressed and with postage prepaid.

25. Titles. The titles to the paragraphs of this lease are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.

26. Operating Obligations of Lessee. At all times while this Agreement is in force, the Lessee shall assign at least 25% of the cars identified on Schedule A for the benefit of facilities located in the State of New York. It is the understanding and intent of the parties to this Agreement, that this provision shall mean that these facilities located in the State will receive virtually 100% of the benefit of these assigned cars.

The Lessee agrees that the remaining 75% of the cars identified on Schedule A must move an average of six loads a year for the benefit of shipping facilities located in New York State.

Pursuant to provisions approved by the Interstate Commerce Commission (currently ICC ExParte No. 334) car compensation basic per diem charges are payable between railroads. The Lessee agrees that the gross amount of these mileage rates collected by the Lessee for all of the equipment listed on Schedule A shall be used for the maintenance of such equipment, and for no other purpose. The amount of the "mileage rate" shall be the amount prescribed, from time to time, by the Interstate Commerce Commission. The Lessee hereby agrees that it will collect and segregate the gross mileage accruals collected for all of the equipment described in Schedule A. The Lessee shall be permitted to keep an amount not to exceed \$25,000 as cash on hand for immediate disbursement for repairs to said equipment. Any amount exceeding \$25,000 shall be deposited in the escrow account set up pursuant to this Agreement, as in Schedule B hereto.

The Interstate Commerce Commission, in the above proceeding, also provides for a per diem hourly rate collected by the railroad owning a car and paid by the railroad on which the car is located.

The Lessee hereby agrees that it will collect and segregate the gross "per diem hourly charges" collected for all of the equipment described on Schedule A and deposit such moneys in the escrow account set up pursuant to this Agreement, as in Schedule B hereto. The Lessee shall make such deposits on a monthly basis as collected, and shall not use such moneys for any other purpose. The funds will be used by the Lessor to improve other capital assets of the Lessee or of other railroads in a manner similar to and consistent with prior State investments in the Lessee and other railroads and consistent with the purposes and provisions of Section 14-d of the State Transportation Law. The Lessee shall have the right to use up to a maximum of \$914,600 so collected in the Fund for the purpose of satisfying its responsibilities in paragraph 27 of this Agreement. This amount of \$914,600 includes the \$350,000 Lessee received from the per diem revenues in accordance with the Agreement between Lessor and Lessee dated July 2, 1981. All investments made through this fund will be secured by the State with title.

27. Rebuilding. The parties hereto agree that each item of equipment set forth on Schedule A shall be rebuilt in the following manner.

Each car will be rebuilt to meet the standards for box cars as set by the American Association of Railroads. Upon such rebuilding, and pursuant to such standards, the additional useful life as classified by the standards shall be at least twenty years.

The cost of such rebuilding shall be jointly financed by the parties hereto. The estimated cost for the rebuilding of the 200 box cars is \$5,221,200. The Lessor shall be responsible for a maximum of \$2,750,000.



The Lessee will be responsible for the following costs:

- (a) Transportation costs
- (b) Strip down and set up costs
- (c) Inspection engineering and security costs, and
- (d) Any cost of rebuilding which exceeds the \$2,750,000 contributed by the Lessor and the per diem hourly charge assignment granted by Lessor.

28. The Lessee shall be responsible for providing for the rebuilding of the box cars, either by contract or with its own forces. Prior to commencing rebuilding, Lessee will submit a work plan to Lessor for accomplishing the rebuilding. All rebuilding work will be completed within two years from the date this Agreement is fully executed. Any contracts entered into by the Lessee for such rebuilding must receive the prior written approval of the Lessor. The sole responsibility of the Lessor is limited to the financial participation set forth in paragraph 27 herein.

29. Recording Expenses. Lessee shall, at no cost or expense to Lessor, cause this lease to be filed and recorded with such federal, state and local governmental agencies as may be required or permitted by applicable law, rule, regulation or ordinance. Lessee shall, from time to time and at no expense to Lessor do and perform any other act and will execute, acknowledge, deliver, file, register and record (and shall refile, reregister and rerecord as necessary) any and all additional instruments and documents which may be required or permitted, now or in the future, under applicable law, rule, regulation or ordinance.

30. Execution in Counterparts. This lease may be executed in several counterparts, each of which so executed shall be deemed to be an original.


31. Audit and Inspection. The Lessee shall permit the Lessor, and any authorized representative of the Lessor, and the State Comptroller or his duly authorized representative, and any representative of any other State or Federal agency with a statutory responsibility over the Lessee to inspect all the equipment which is subject to this Agreement and to audit and inspect all books, records, data or other information kept or required to be kept by the Lessee related to this Agreement and/or pursuant to State or Federal law or regulation, concerning the Lessee and its operation.

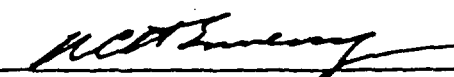
32. Documents Comprising this Agreement. This Agreement shall include this document, Appendix A, and Schedules A, B, and C all of which are attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.


DELAWARE AND HUDSON RAILWAY COMPANY

PEOPLE OF STATE OF NEW YORK

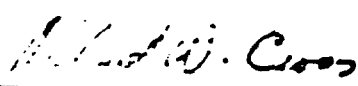
By   
Title President & Chief Executive  
Officer

By   
Commissioner of Transportation

APPROVED:

  
JUL 14 1981  
For the Comptroller  
Pursuant to Section 112,  
State Finance Law

APPROVED:  
APPROVED AS TO FORM  
NEW YORK STATE  
ATTORNEY GENERAL

JUL Attorney General  
By:   
RICHARD V. CROSS  
Attorney

STATE OF NEW YORK    )  
                              ) ss:  
COUNTY OF ALBANY    )

On this 8th day of     July     , 1981 , before me personally  
came    K. P. Shoemaker     , to me known and  
known to me to be the President & Chief Executive Officer of the Delaware  
and Hudson Railway Company, the corporation described in and which  
executed the foregoing agreement, and he acknowledged to me that he  
signed the agreement on behalf of said corporation pursuant to the  
lawful authorization of the board of directors of said corporation.

  
Notary Public

Commission Expires 12/31/83  
Notary Public in the State of New York  
Commission Number 12345678

## THE FOLLOWING IS A LIST OF BOX CARS BY NUMBER PREVIOUSLY MAINTAINED BY D &amp; H RAILROAD:

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29020	29043	29067	29090	29112	29132	29204	29291	29412	29489
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discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

- (c) If directed to do so by the Commissioner of Human Rights, the contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of Chapter 285 and (a) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
  - (d) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability, or marital status.
  - (e) The contractor will comply with the provisions of Sections 200, 209 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purpose of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
  - (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority, an agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after consultation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereon has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
  - (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.
- VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such parties with any other bidder or with any competitor;
  - 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
  - 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.
- The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

VII. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.

discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Commissioner of Human Rights of such failure or refusal.

- (c) If directed to do so by the Commissioner of Human Rights, the contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Commissioner of Human Rights setting forth the substance of the provisions of clauses (a) and (a) and such provisions of the State's laws against discrimination as the State Commissioner of Human Rights shall determine.
- (d) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, sex, national origin, age, disability or marital status.
- (e) The contractor will comply with the provisions of Sections 200, 209 of the Executive Law and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Commissioner of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to the contractor's books, records and accounts by the State Commissioner of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of an inspection to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.
- (f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Commissioner of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until the contractor satisfies the State Commissioner of Human Rights that the contractor has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Commissioner of Human Rights after consultation efforts by the Commissioner have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the Commissioner, notice thereof has been given to the contractor and an opportunity has been afforded the contractor to be heard publicly in accordance with the Executive Law. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.
- (g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the State Commissioner of Human Rights or the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the State Commissioner of Human Rights or the contracting agency, the contractor shall promptly so notify the Attorney General, requesting the Attorney General to intervene and protect the interests of the State of New York.

VI. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- 1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such parties with any other bidder or with any competitor;
  - 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;
  - 3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determined that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of paragraph VI (a).

VII. The agreement shall be void and of no force and effect unless the contractor shall provide coverage for the benefit of, and keep covered during the life of this agreement, such employees as are required to be covered by the provisions of the Worker's Compensation Law.